
5.0 ANECDOTAL EVIDENCE SUMMARY

This chapter describes the results of anecdotal information collected from personal interviews, public hearings, and telephone surveys. The collection and analysis of anecdotal data are important components of this disparity study because the data provides a better understanding of the culture of contracting and purchasing with the City of Phoenix by reciting personal accounts of incidents of discrimination.

Courts have relied on anecdotal data in disparity studies to demonstrate the existence of past discrimination. Regarding the use of anecdotal evidence, the Supreme Court in *Croson* explains, “Evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government’s determination that broader remedial relief is justified.” *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 509 (1989).

Courts have indicated that while anecdotal evidence alone is generally not sufficient to prove discrimination, the combination of specific incidents of discrimination in conjunction with significant statistical disparities is effective to satisfy the “strong-basis-in-evidence” test to establish discrimination and justify a race- and gender-conscious program.

In applying *Croson*, the Ninth Circuit Court of Appeals in *Associated General Contractors of California, Inc. v. City and County of San Francisco*, addressed the appropriate manner in which a race- and gender-conscious program should be evaluated. Concerning anecdotal evidence, the court stated, “As pointed out by the City, it must simply demonstrate the existence of past discrimination with specificity; there is no requirement that the legislative findings specifically detail each and every instance that the legislative body has relied upon in support of its decision that affirmative action is necessary.” *Associated General Contractors of California, Inc. v. City and County of San Francisco*, 950 F.2d 1401, 1416 (9th Cir. 1991). Based on this case, this chapter outlines allegations of specific

instances of discrimination that minority and women business owners have experienced in contracting and purchasing with the City of Phoenix.

5.1 Methodology

Several methods were used to collect anecdotal data from individuals representing minority-, women-, and non-minority-owned businesses. Personal interviews, public hearings, and telephone surveys were used to document specific incidents and patterns of discrimination. Personal testimonies included in the analysis are limited to firms that have conducted or attempted to conduct business with the City of Phoenix and are located in Maricopa County.

Public Hearings

Two public hearings were conducted to receive testimony and exhibits relevant to minority and female participation in construction and procurement contracting in Phoenix and the City's M/WBE program. Both public hearings were held in Phoenix on February 2 and 4, 1999. The hearings were advertised through local newspapers and by flyers to M/WBE and non-M/WBE owners and organizations.

Individuals in attendance at the public hearings received speaker instructions and a speaker's card to complete. In order to be eligible to present testimony at the hearing, individuals had to have either worked for, or attempted to work for, the City of Phoenix, or worked for, or attempted to work for, a contractor or vendor engaged on a City of Phoenix project.

If an individual was interested in speaking at the hearing and met the criteria to present testimony, then he/she completed the speaker's card before presenting his or her testimony. The cards were collected and given to the hearing officer.

A total of 18 MBE and WBE owners presented testimony at two public hearings. Six speakers presented testimony on February 2, 1999. Thirteen speakers testified on February

4, 1999. One speaker at the second hearing also testified at the first hearing, but was allowed to give additional comments at the end of the second hearing after all other speakers presented their testimony. One additional speaker submitted a speaker's card, but stated on the record that he did not meet the criteria to be able to present testimony.

The public hearings were conducted by a hearing officer and the hearing panels were comprised of members of the Human Relations Commission, the Human Relations Minority and Women Development Committee and the M/WBE Oversight Committee. The hearing officer then informed the audience of the legal background for the disparity study and the role of hearing participants in establishing a factual record for the anecdotal portion of the study.

The participants also were instructed to provide specific testimony about incidents of discrimination they experienced in conducting business with the City of Phoenix. Although each speaker was asked to keep his or her testimony to approximately five minutes, all were given the opportunity for full participation. As part of the hearing testimony, speakers were required to identify themselves, including their name, the business they represented, ethnic or gender group, certification status, and how long they have been in business. After each speaker's testimony, the hearing officer and panel members asked questions to clarify the testimony. A court reporter recorded both proceedings.

Personal Interviews

One-on-one personal interviews were also conducted to elicit examples of specific incidents of discrimination on the basis of ethnicity and gender. An interview guide was used and covered a range of questions concerning a firm's experiences conducting business with the City of Phoenix, experiences in the private sector, and the firm's business operations.

In collecting anecdotal evidence relevant to the existence of discriminatory practices, the interviewers were objective in identifying the participants, drafting interview questions, asking questions during the interviews, and in eliciting follow-up responses from individuals.

The interviewers made no attempt to prompt or guide the testimony or responses of individuals, but tried to identify any unrecognized or acknowledged discriminatory practices.

For personal interviews, approximately 1,000 firms were selected randomly from a database of firms that bid on construction projects let by the City of Phoenix or bid on contracts to provide goods and services to the City between the years of 1993 and 1997.

Ninety-two interviews were scheduled and 70 were actually conducted. The results of 69 interviews are included in the interview findings. The companies interviewed represent a cross section of firms in both construction and procurement areas. Twenty-seven Hispanic firms, 16 African American firms, three Native American firms, eight Asian firms, and 15 women-owned firms were interviewed.

Each interview was held on-site at each owner's office and ranged in length from 45 minutes to two hours. The interviews were recorded on tape and later transcribed. Before each interview, business owners were informed that their responses to the questionnaire would be confidential and would not be distributed to any other person or firm with their identity revealed—except if legal action were filed, in which case, all documentation would be provided to the court.

Telephone Surveys

MGT employed a subcontractor to conduct telephone interviews of all operating and receptive firms listed on the City of Phoenix vendor list. Due to the under-representation of minority firms on the City's vendor list compared to the number of non-minority firms, the number of minority firm responses was not sufficient for standard statistical analysis. In order to conduct proper statistical analysis, it is necessary to compare the response frequencies of two or more different groups. In this case, it would be necessary to compare the responses of minority and non-minority business owners. The lack of cases for minority-owned businesses inhibit useful comparisons with the non-minority business responses.

In order to rectify the non-comparability problem, phone survey data for non-minority businesses are compared to the personal interview data for minority-owned firms. The inclusion of personal interview data for minority businesses allows for sufficient sample size and enables meaningful comparisons with the survey responses of non-minority business owners. By joining the phone and personal interview data, comparisons of operation, primary line of business, number of employees, and gross revenues could be made. Section 5.4 summarizes the results of the comparisons.

5.2 M/WBE-Owned Firm Demographics

5.2.1 Business Characteristics

The interview instrument included questions designed to establish a business profile for each business interviewed. From the interview, information was gathered concerning the primary line of business, number of years each firm has been in business, organizational structure, gross revenues, and firm size.

Primary Line of Business

Exhibit 5-1 summarizes demographic data on M/WBEs primary line of business.

**EXHIBIT 5-1
PRIMARY BUSINESS CATEGORIES FOR M/WBE FIRMS IN THE CITY OF PHOENIX**

Business Category	African American	Hispanic	Asian	Native American	WBE	Total	Percent
	Total	Total	Total	Total	Total		
Building Construction	3	8	2	1	3	17	25%
Highway/Bridge Construction	0	2	0	0	2	4	6%
General Services	11	13	3	2	5	34	49%
Supplies/Commodities	2	3	1	0	5	11	16%
Other	0	1	2	0	0	3	4%

Source: M/WBE Personal Interviews

The categories are building construction, which included general contractors and all subcontractors that perform services related to building construction; highway/bridge construction, which included any contractor that performs highway, bridge, or road construction, or any subcontractor that performs services related to highway, bridge, or road construction; general services; or supplies/commodities. The final category — “other” — includes three engineering firms. In addition to the information above, the chart also reflects the number and percentage of businesses in each category by ethnicity.

As shown in Exhibit 5-1, of the firms interviewed, 25 percent were in the building construction category; six percent were in the highway/bridge construction category; 49 percent were in the general services category; 16 percent were in the supplies/commodities category; and four percent were in the “other” category.

Years in Business

Seventy-five percent of the African American firms interviewed were established between 1990 and 1998. Only one firm (six percent) was established before 1980. Of the Hispanic firms interviewed, 41 percent of the firms were established between 1990 and 1998. Sixty-seven percent of the firms were established between 1986 and 1998. Only 19 percent of the firms were established before 1980. Nearly 40 percent of the Asian American and Native American firms were established between 1990 and 1998. More than half (53 percent) of the WBE firms interviewed were established between 1990 and 1998. Only 13 percent of all the firms interviewed were established prior to 1980. The foregoing data is summarized in Exhibit 5-2.

**EXHIBIT 5-2
YEAR BUSINESS FORMED
BY BUSINESS OWNER RACE/ETHNICITY AND GENDER
PERSONAL INTERVIEWS
CITY OF PHOENIX, ARIZONA**

YEARS	AFRICAN AMERICAN		HISPANIC AMERICAN		ASIAN AMERICAN		NATIVE AMERICAN		WHITE WOMEN	
	TOTAL	%	TOTAL	%	TOTAL	%	TOTAL	%	TOTAL	%
1920-29	0	0%	0	0%	0	0%	0	0%	0	0%
1930-39	0	0%	0	0%	0	0%	0	0%	0	0%
1940-49	0	0%	1	4%	0	0%	0	0%	0	0%
1950-59	0	0%	2	7%	0	0%	0	0%	0	0%
1960-69	0	0%	0	0%	0	0%	0	0%	0	0%
1970-75	0	0%	1	4%	0	0%	0	0%	1	7%
1976-79	1	6%	1	4%	0	0%	0	0%	2	13%
1980-85	2	13%	4	15%	1	13%	1	33%	2	13%
1986-89	1	6%	7	26%	4	50%	0	0%	2	13%
1990-95	7	44%	8	30%	2	25%	1	33%	6	40%
1996-98	5	31%	3	11%	1	13%	1	33%	2	13%
Total Responding	16	100%	27	100%	8	100%	3	100%	15	100%

Source: Personal Interviews

Organizational Structure

The majority of African American firms (63 percent) and Native American firms (67 percent) interviewed were sole proprietorships. The majority of the Hispanic (85 percent), Asian (71 percent) and women-owned businesses (80 percent) are corporations. See Exhibit 5-3.

Gross Revenues

Information concerning gross revenues is summarized in Exhibit 5-3. The following reflects information obtained during the interviews. Of the African American firms interviewed, no firm had gross revenues over \$4,000,000. Only one firm had gross revenues

EXHIBIT 5-3
SELECTED DEMOGRAPHICS BY BUSINESS OWNER
RACE/ETHNICITY AND GENDER
PERSONAL INTERVIEWS
CITY OF PHOENIX

CATEGORY	AFRICAN AMERICAN		HISPANIC AMERICAN		ASIAN AMERICAN		NATIVE AMERICAN		WHITE WOMEN	
	TOTAL	%	TOTAL	%	TOTAL	%	TOTAL	%	TOTAL	%
Organizational Structure										
Self employed	10	63%	4	15%	1	14%	2	67%	2	13%
Partnership	1	6%	0	0%	1	14%	0	0%	1	7%
Corporation	5	31%	23	85%	5	71%	1	33%	12	80%
Other	0	0%	0	0%	0	0%	0	0%	0	0%
Total Responding	16	100%	27	100%	7	100%	3	100%	15	100%
Gross Revenues										
Under \$500,000	9	69%	6	23%	2	29%	1	50%	8	53%
\$500,000 - \$999,999	2	15%	3	12%	1	14%	0	0%	0	0%
\$1,000,000 - \$1,999,999	1	8%	8	31%	1	14%	0	0%	5	33%
\$2,000,000 - \$2,999,999	0	0%	2	8%	1	14%	1	50%	0	0%
\$3,000,000 - \$3,999,999	1	8%	3	12%	1	14%	0	0%	1	7%
\$4,000,000 - \$4,999,999	0	0%	0	0%	1	14%	0	0%	1	7%
\$5,000,000 - \$5,999,999	0	0%	1	4%	0	0%	0	0%	0	0%
\$6,000,000 - \$6,999,999	0	0%	1	4%	0	0%	0	0%	0	0%
\$7,000,000 - \$7,999,999	0	0%	0	0%	0	0%	0	0%	0	0%
\$8,000,000 - \$8,999,999	0	0%	1	4%	0	0%	0	0%	0	0%
\$9,000,000 - \$9,999,999	0	0%	0	0%	0	0%	0	0%	0	0%
Above \$10,000,000	0	0%	1	4%	0	0%	0	0%	0	0%
Total Responding	13	100%	26	100%	7	100%	2	100%	15	100%
Number of Employees										
0	3	19%	0	0%	0	0%	2	67%	2	13%
1-10	7	44%	13	48%	4	50%	1	33%	6	40%
11-50	5	31%	12	44%	4	50%	0	0%	7	47%
51-75	1	6%	1	4%	0	0%	0	0%	0	0%
over 75	0	0%	1	4%	0	0%	0	0%	0	0%
Total Responding	16	100%	27	100%	8	100%	3	100%	15	100%

Source: Personal Interviews of M/WBE Business Owners

between \$3,000,000 and \$3,999,999. Only one firm had gross revenues between \$1,000,000 and \$1,999,999. The remaining African American firms, 84 percent, had gross revenues under \$1,000,000.

Of the Hispanic firms interviewed, 66 percent had gross revenues of less than \$2,000,000. Only three firms had gross revenues over \$5,000,000, with one firm having gross revenues over \$10,000,000. More than half (53 percent) of the WBE firms interviewed had gross revenues of less than \$1,000,000. Only two firms had gross revenues over \$2,000,000. Fifty percent of the Native Americans interviewed had gross revenues under \$500,000. The remaining 50 percent had gross revenues between \$2,000,000 and \$2,999,999. Of the Asian firms interviewed, three firms (38 percent) had gross revenues over \$2,000,000.

Firm Size

Seven of the 16 African American firms interviewed had between one and 10 employees. No African American firm had over 75 employees. Only one African American firm had over 50 employees. Thirteen Hispanic firms had between one and 10 employees. Only two Hispanic firms had over 50 employees. No Asian, Native American, or woman-owned firm had more than 50 employees. Only one of the Native American firms interviewed had employees other than the owners, and that firm had five employees. All Asian American firms had between one and 50 employees. Of the women-owned firms, 47 percent of the firms had between 11 and 50 employees. Forty percent of the WBEs had between one and 10 employees. See Exhibit 5-3.

5.3 White Male-Owned Firm Demographics

Significant demographic information about white male business owners resulted from the surveys. The demographic information is summarized in Exhibit 5-4 below.

**EXHIBIT 5-4
SELECTED DEMOGRAPHICS OF WHITE MALE BUSINESS OWNERS
TELEPHONE SURVEY
CITY OF PHOENIX**

DEMOGRAPHICS	WHITE MEN %
Years in business:	
1994-98	8%
1990-93	9%
1980 -89	28%
Pre-1980	55%
Primary line of business:	
Construction (Bldg)	6%
Construction (Road)	2%
General Services	23%
Commodities	52%
Other	17%
Number of Employees:	
0	1%
1 - 10	2%
11 - 50	23%
51 - 75	52%
over 75	17%
Gross revenues:	
Less than \$100,000	7%
\$100,001 to \$500,000	14%
\$501,000 to \$1,000,000	11%
\$1,000,000 to \$5,000,000	32%
\$5,000,000 to \$10,000,000	14%
Over \$10,000,000	22%

Source: City of Phoenix Telephone Survey

Years In Business

More than half (55 percent) of the businesses owned by white men were established before 1980. Of the firms surveyed, only eight percent of the businesses owned by white men were established after 1993.

Primary Line of Business

Of the firms surveyed, six percent were in the building construction category; two percent were in the road construction category; 23 percent were in the general services category; 52 percent were in the commodities category; and 17 percent were in the "other" category.

Firm Size

Fifty-two percent of the businesses owned by white men had between 51 to 75 employees. Only one percent of the firms owned by white men had no employees. Seventeen percent of the businesses owned by white men had over 75 employees.

Gross Revenues

Thirty-six percent of the businesses owned by white men had gross revenues of \$5,000,000 or greater. Only seven percent of the businesses owned by white men had gross revenues of less than \$100,000.

5.4 Comparison of M/WBE and Non-Minority Demographics

Several differences exist between minority and women-owned businesses and majority male-owned businesses. First, businesses owned by white males have been in existence longer than those owned by minorities and women. More than half the businesses owned by white men were established before 1980. Only 13 percent of the minority and women owned businesses were established before 1980. Seventeen percent of the businesses owned by white men were established in the 1990s. In contrast, more than half of the businesses owned by minorities and women (52 percent) were established in the 1990s.

Businesses owned by white men have higher gross revenues than those owned by minorities and women. Twenty-two percent of the businesses owned by white men had gross revenues over \$10,000,000. Only one minority or woman owned firm (one percent) had gross revenues over \$10,000,000. Twenty-one percent of the businesses owned by white men had revenues less than \$500,000 while 46 percent of the businesses owned by minorities and women had gross revenues less than \$500,000.

Businesses owned by white men are larger than those owned by minorities and women. Seventeen percent of the businesses owned by white men had over 75 employees. Fifty-two percent of the businesses had more than 50 employees. Conversely, only one

minority or woman owned business (one percent) had more than 75 employees. Only three businesses (four percent) had more than 50 employees. For the number of employees in a white male owned firm, the largest numbers of businesses (52 percent) were in the category of 51 to 75 employees. The largest category for the number of employees for minority and women owned firms (45 percent) was one to 10 employees.

5.5 Specific Incidents of Discrimination

5.5.1 Bid Shopping, Bid Manipulation, and Good Faith Efforts

The most pervasive and widespread complaint found among MBEs of almost every ethnic group as well as WBEs was the discriminatory abuse and manipulation of the City's bidding procedures by majority prime contractors against MBEs and WBEs, and the City's tolerance of those practices. MBEs and WBEs allege that the bidding policies for construction contracts, as written by the City and as implemented by majority contractors since 1994, operate in a disparate and discriminatory fashion against MBEs and WBEs. Under the existing bidding procedures, prime contractors, who are almost exclusively white, are not required to list their MBE or WBE participants until after the lowest bidder is determined. Then they are given 24 hours to define the level of MBE and WBE participation. MBEs and WBEs state that this practice is discriminatory in two ways.

First, M/WBEs are required to bid against each other within a very short time frame with inadequate information. Prime contractors are generally given ample time and detailed specifications to prepare their bids. Whereas, M/WBE firms are given limited time to render significant bids. These practices often result in MBEs and WBEs performing contracts at a loss or with marginal profits. Second, MBEs and WBEs allege that since prime contractors are not required to define the level of MBE and WBE participation before bid opening, they often solicit quotations from MBEs and WBEs with no intention of actually using them on a project.

A certified female African American paint contractor who had been awarded two contracts over the five-year period (1993-97) of this study (one of which did not materialize), cited her experience as an example of the unfairness of the bidding process to MBEs. For one year during the five-year period, she submitted approximately 18 bids per month without success or even a response. It was at that point, after some investigation, she realized that majority contractors were documenting their good faith efforts and they had no intention of doing business with her company. In a personal interview, she stated:

[W]e found out a lot of information about submitting bids all the time, about 18 a month. We found out that a lot of them were just using our numbers, and had no intentions of using us, and all they had to do is show the City that they attempted to get us to bid with them.

A similar account was provided by a certified Hispanic concrete contractor. Over the five-year period of the study, he received one subcontract. During a personal interview, the owner described practices that majority prime contractors commonly use to get around having to use minority or women-owned businesses as subcontractors. He confirmed the common practice that prime contractors request bids from business owners who do not work in the requested area or businesses that do not have the capacity to complete the job. He indicated that when this solicitation pattern began, he felt the requests for bids were sincere; however, his opinion regarding the sincerity quickly changed.

Initially, this owner would read the invitation and recognize that the dollar amount of the contract was too large for his firm's capacity. He would respond to the general contractor to thank him for the solicitation and indicate that the contract was beyond his capacity. The next time that prime contractor had a project available for bidding, he would receive another invitation to bid. He responded:

[T]here's that big dollar amount that there's no way in heck I can do it . . . I send it back. They send me a third one, and something in my brain clicks . . . I call over there and I say, 'Listen guys, I appreciate you sending me these solicitations, but please, this is the amount of dollar work that I can do. If you have projects that I can work on for you, if you have projects of

this size, I would be glad to bid to your company and do appreciate your participation in this. . . . [C]all me with one of these projects.'

He stated that when the same prime contractor sent him another solicitation on a large project he threw it away because he is aware that these contractors are soliciting quotes from subcontractors that do not have the capacity to bid the project in an attempt to meet their good faith requirement.

In a personal interview, a Hispanic general contractor expressed frustration with practices non-minority contractors use to manipulate the City's subcontracting goals program, which allow non-minority general contractors to avoid using minority subcontractors. According to this general contractor, the City's bid process makes waiver of goals easy for majority prime contractors to obtain. Commenting on how, unlike his majority competitors, his company complies with the intent of the policies, he stated:

When we bid our work, we follow the book. We utilize minorities and we don't turn in any waivers because we can find the people. When we turn in our bid, everybody waives theirs except for a couple of people. We called and said why can these people waive their stuff and I can get minority people and they can't. She says they just waive everything . . . they can sign a waiver and turn around and meet the goals the next day. They can change their minds and say oh I found my minority participation. To me that is kind of backward in hindsight. You can tell a sub hey you want this job. . . that's the part I don't like. I can't say I am going to meet the goals and then request a waiver the next day. I don't think it works in reverse.

It is important to note that in many instances, majority prime contractors request waivers of the goals established by the City when they submit their bids on construction projects. Yet, within 24 hours, as noted by the above-mentioned MBE, prime contractors are able to find MBE and WBE contractors who are willing and able to perform. MBE and WBE contractors that were not contacted before the time of bid submission are often asked within the 24-hour window to match or beat a quotation from another MBE or WBE. This is often done with little or no advance notice to MBEs and WBEs. In many instances, neither the MBE or WBE contacted prior to the submission of the waiver request, nor those contacted

after the prime contractor receives the award, receive subcontracts. Either the prime or a non-M/WBE subcontractor performs the work.

This same business owner also expressed frustration with the fact that majority prime contractors solicit minority subcontractors with knowledge that the minority contractor does not perform the type of services requested or simply as a tool to document their so-called good faith effort. In his interview, he stated:

These real big contractors like 10 million, 24 million dollar contracts, they send me faxes left and right. I get faxes from at least five or six of these big primes that are bidding these jobs wanting me to participate in it as a subcontractor, but I am not a subcontractor.

According to this owner, the contractors use his lack of response as an example of their good faith efforts even though the majority prime contractors know that he is a prime contractor and does not bid subcontracting work. When asked for examples of contractors that make these requests, he identified three. He explained that this practice happens when there is a large City project up for bid.

One Hispanic MBE in a personal interview expressed how prime contractors have used him to put together a project to get the lowest bid, and ultimately he is never used on the project. In such instances, he presents his company as willing and able to perform. However, he is bypassed and the prime contractor or another majority subcontractor does the work. He was initially told, “[Y]ou’re the only concrete bid we’ve got.” He explained:

I’ve bid it, and guess what, you should have a job; at that point you get an invitation to bid. Well what’s this? I already bid this job. Well you maybe want to look at it; they put the bid out to everybody else to get the job bought down. You don’t get the project. So my time has been wasted, because my bid is my bid. I’ve already submitted it; they’ve got the project, by rights you should go to work.

[O]ne of the ones that sends me solicitations is [name]. They’re the ones that get me to budget the prices for them, for the sake of winning the projects again.

Here’s a perfect situation . . . I budgeted this job, and then they send me a bid solicitation. After I took my time to go out to the job with zero plans, just one sketch, and I go out there, and I look at the project and I say, based on

my expertise, I'm not an architect, I'm not an engineer, but based on my expertise I can go out there and say okay, we're going to have to put this wall here, this is going to be bearing . . . this is going to carry this kind of weight . . . the concrete will be this type . . . I put that project together.

[T]hey take that bid, and they put the prices for the rest of that project together . . . and they say, we believe we can build you this job for this amount of money. They win the project, the project is theirs, now they get a set of plans made up with specs, footings, maybe based on what I gave them, I don't know. . . . [T]hey get plans and they say, here we got the plans, bid as per plans, specifications, and that's not right. What should be right is, look, you were a part of this budget stuff together, here's the plans that come out, check it and see if it's more or less than what you budgeted and what we need to do to stay in the parameters of this budget, to say it to me, but not to say it to the entire industry.

In some instances it is alleged that City officials overlook the RFP process for goods and services altogether and contract directly with majority suppliers and do not give WBEs and MBEs the same opportunity to contract. For example, in one of the hearings, a WBE testified as follows:

WBE: We are proud to be a City of Phoenix Certified Women-Owned Business. I'm also a very strong supporter of the certification process itself. I'm speaking on behalf of my own company as well as the National Association of Women Business Owners, NAWBO. NAWBO polled our members a few months back to see what it - what they thought was important, what they had to do to go after public business . . . Included are RFPs that should have gone out, did not go out, and contracts awarded to noncertified businesses. Personally, I witnessed this firsthand about a year ago. One of the women I was going through the certification process with chose not to get certified. She, however, did get a large contract for the Civic Plaza. Here I am a certified minority-owned business, I work for the City very much . . . and we weren't notified the contract was going out. She said it didn't go out. I just happened to get a phone call from the City and they asked if I wanted it and I did it. That's my first experience . . .

Hearing Officer: Let me go back to the incident that you mentioned where you bid as a certified WBE and another business received the business or received the contract that was not certified. Do you recall the incident?

WBE: Yes, the Civic Plaza.

Hearing Officer: Tell me when this occurred.

WBE: This would have occurred less than six months ago.

Hearing Officer: Was the business that received the contract a non-minority business? . . . I guess what I'm getting at, is she receiving that business as a majority business owner?

WBE: Yes.

The same WBE also cited an example of how majority prime contractors contact WBE companies and solicit bids to satisfy the good faith effort requirements with the intention of ultimately doing business with another majority contractor and not using the WBE.

WBE: Another experience of an RFP being awarded to a majority business looking for another minority business, saying they asked us to submit our ideas in a proposal. They told us we have the contract within their contract. We waited and waited. They took our ideas and gave it to a non-minority owned business. That's twice we have had major problems.

Finally, the WBE stated that there were instances in which WBEs did not receive RFPs from the City even though the bid codes (type of work) matched their codes (type of business). In such instances, the WBEs are willing and able to work, but are bypassed by the City.

WBE: As far as other woman-owned members, they mentioned RFPs weren't sent to their businesses, though the bid specifically matched their codes. They had the corresponding codes but the bid never came to them. It came to other businesses in their same type of business but they didn't get it. Specifically members in the technology arena, they felt RFPs are written for specific businesses, and those not on the good old boy's network didn't have a chance.

An African American MBE owner of a company that provides security officers commented in a personal interview on the good faith requirement.

I think that 'good faith' is making a sincere effort to contact and respond to minority contractors . . . I've filled out the thing, sent it in, called the company, tried to contact the person who was the actual responsible person for doing that bid, never got a response. They're always busy. They're always doing something. So you really have no idea or knowledge of what's going on . . . they're not really being responsive.

I think they're sending out the information, but they're not responsive to do any follow up on it, so they might be getting a waiver on it, and just not saying that they didn't get any response on it, you know, we sent the information out but we didn't get a response. And so then they say well we can apply for a waiver, we sent it to these people. . . . I really don't see a

sincere effort on their behalf. . . . [T]hey're not being very responsive . . . I know that I've made efforts, and I know the response that I got.

Another certified WBE firm that supplies imprinted business gifts and promotional products alleges there is a "good old boy" network that operates in connection with the City of Phoenix contracting process. The firm received three contracts over the last five years after 25 bids. Referring to the City of Phoenix officials, she stated:

I would say that people are comfortable doing business with ones they have done business with in the past. My feeling is that they go through motions of putting things out for bids but not having any real intention of being fair about it.

In support of this contention, this WBE cited the following incident:

Back last June, I was low bidder on a contract for the police department and I was called being told I was the low bidder and awarded the contract. A week later they called me back and said 'we don't have any money, we aren't going to do this.'

An Asian MBE owner testified about her negative experiences with the RFP process.

A particular instance that we have encountered for the first three years, we had - we were asked to be on a proposal and to fulfill the minority requirements, and they got the job, we didn't. We were not notified they got the job and we didn't get any part of the work. I think that was the Union Hills water treatment plant.

There's another instance, we sent out a proposal. There was three people responded, three companies that responded. Then we asked - they went back for a resubmittal and we asked why and they said they didn't have enough participation, didn't have enough proposals. I know of instances where there's been one proposal and they got the job. I don't know why they threw it out and re-sent out the RFP, but we were definitely qualified to do the work. Other than that, those are the two incidents that I had that would suggest there's definitely a need for this program.

Hearing Officer: I would like to go back to your incident and put a time frame on it, the first one, what were you saying, a majority contractor received a bid from you and that particular contractor received the award but you weren't given the work.

MBE: We do design services, we don't do construction. We were on their proposal suggesting we were going to do part of the work. We never saw the proposal. Sometimes we get a copy of it, sometimes we don't. We never heard from them, and then we called and said what is going on with the job? Oh, we got it. We said, what portion of it is our work? Well, they

had already started, and we just didn't have any portion of the work so we weren't involved, even though our name was in the proposal.

Hearing Officer: Essentially you were used.

MBE: Just to fulfill minority requirement. Ten percent of evaluation is based on minority participation.

Hearing Officer: I wasn't sure I followed the last example, the proposal was thrown out. Was this one where you bid on it directly and that was thrown out or were you bidding as a subcontractor? Would you explain that for me?

MBE: We ended up bidding it twice, I think - if I remember right, it was a couple of years ago, we were prime on it at first, we had subbed out a couple of the other portions of the work, the civil work and stuff, and when they threw it out and they said they were going to do a re-RFP, send it out again, and because they said there wasn't enough response and they had three. The second time we ended up being the sub and the other half was the prime and we still didn't get it.

Hearing Panel Member: I have a question. In reference to the majority contractor, I guess I'm confused. You proposed under that majority contractor part of the bid or a specific - the design component; is that right?

MBE: That's correct.

Hearing Panel Member: The design component. And you did not receive the work. Do you know who received the work?

MBE: For that? No. They ended up doing the whole thing. We just do electrical.

Hearing Panel Member: Do you know whether or not that particular portion was subbed out?

MBE: No. They have their own electrical division, it is kind of small, but they put us on their proposal to do the electrical work . . . They did it themselves.

Hearing Panel Member: Melinda, can you share with this panel who this consultant was? Who did this project?

MBE: [yes]

In one instance, a certified Asian MBE supplier of computer equipment was the low bidder on a project, but did not receive the award of the contract. Over the period of this study, the MBE owner stated that on average, he responded to purchase orders and bid

requests at the rate of three to five attempts every 10 days. With regard to whether his company was willing and able, he stated that he is called by the City's Purchasing Division quite often before the bids go out to get his assistance and expertise in putting together bid specifications. In an interview, this owner related the specific incident in which he was the low bidder but did receive the contract. He stated:

One time I won one bid and I didn't know I won but they have a record on public and my technician happened to be there and we knew we were the lowest. I called [City Employee] and said how come I didn't get that bid. He said well I didn't even know you bid on it. I said well my name is there so I must have bid on it. It turns out that he found my bid under his desk. [City Employee] is in Water Works. I haven't seen a bid from him in a long time.

The WBE owner of a certified paving and grading contracting company who has attempted to do business on City projects about 20 times over the period of this study, but has not received any contracts, noted that majority firms have often sent requests for bids and not allowed sufficient time for the WBE to reasonably respond. She stated that prime contractors use this tactic to get around using WBEs. In short, she stated:

The same thing applies. They send you a fax at the last minute requesting a bid and you don't have enough time to prepare. So, you submit a no. And then, they're able to fulfill their requirement of asking so many WBEs and being turned down. I'm not aware of any other practices.

A certified Hispanic MBE electrical construction firm allege that majority prime contractors as a matter of practice engage in bid shopping to discourage MBEs and to get around having to use minority owned businesses. Over the past five years this MBE has bid on approximately 200 jobs as a subcontractor. He has been awarded approximately 20 contracts in that same period. He described bid shopping by majority prime contractors in the following way:

They'll make a call saying, John Doe Electric is at \$100,000 and they say if you can match that price you can have the project. I need the minority status. I just don't think that's right.

The owner of a certified WBE millwork firm that has bid on City of Phoenix projects 10 to 12 times over the last five years and received approximately six contracts, referred to an

instance in which her company was not treated fairly under the bidding process. In discussing how prime contractors get around using WBEs, she cited the following incident:

I can't even remember the job because I didn't do the job. I was told I was the low bidder at bid time, and then when the job came around I contacted the contractor that won the project, and I asked them, I thought we were low? Oh no, you weren't low, someone else after-bid, someone else came in lower than you. And so the City contacted me, they said you were asked to bid the project and I said yes, and were you told where you were at? And I said yes I was, and I told them that we were told that we were low, but then after the fact we didn't get the job because they said someone else came in and beat us. . . . I bid the project and was told at the bid time that I was the low subcontractor.

When it came time to do contracts and stuff like that, City of Phoenix is calling me asking me if I got my contract, and I said no I did not, and they asked me why and I said I was told that I was low and they were also told that I was the one who was going to do the project

The City officials were told that I was going to be doing the project. They were calling me to verify that I was doing the project, and I said, no I was told that I was not low. They contacted the contractor. The contractor called me and told me that is correct, you were not low, but we did put your name in at bid time, this other number came in after bid time and we're using them. So the City of Phoenix called me back and asked me about that, and I said, well they just told me that someone else came in lower.

Interviewer: Do you know who contacted you from the City?

WBE: No I don't.

Interviewer: Do you know what prime contractor that was?

WBE: No, because it was probably about two years ago, and I didn't do the job, so the job name doesn't stick in my head.

The owner of a certified WBE supplier of promotional products, who bid on approximately 50 contracts during the period covered by this study and received three contract awards, stated how the limited time to respond to bids discourages M/WBEs from bidding and limits the number of projects on which they can bid. She stated:

We will get a fax like this afternoon and the bid will be due by 9:00 a.m. the following day. You have to find the costs, engraving costs, product, shipping, and it is not just opening a catalog and looking at it. There have been a couple we couldn't bid on because we didn't have time to do it.

During his interview, one certified Asian MBE painting contractor, who has bid four times as a prime contractor and 24 times as a subcontractor over the period of this study, and has been awarded 14 contracts, made the following observation in response to the question of whether the bid process was fair:

As fair as it can be. I know of several contracting firms that will shop their subcontractors so I am only answering that it is as fair as it can be. In this office we tend to bid only the general contractors that are fair. If we are aware of shopping then we don't use them and put them on a list. We are wasting our time bidding them so we choose not to.

MBEs have described bid shopping as a widespread pattern and practice by prime contractors, and they complained that it is allowed by the City. One certified Hispanic mechanical supply MBE described the practice as he has observed it during the period of the study. This particular MBE has bid on approximately 25 contracts and has been awarded approximately five during the period of this study. In describing the practice of bid shopping, he stated:

MBE: In other words the general waits until the last minute until he decides, well let's go find minorities. It's going to be bid Monday and they call us Thursday morning and say 'Hey we gotta have a bid but it's got to be here by Monday.' So now they have made their effort to get a minority bid.

Interviewer: So you feel that is all it is, a good faith effort?

MBE: Just to say that they asked a minority, yeah.

Interviewer: So do you feel that maybe they knew that it wasn't enough time?

MBE: Of course.

Interviewer: And that happens frequently?

MBE: All the time.

MBE: That's one of the reasons the work has slacked off for the City because we are wasting our time. We don't know what is going on and when we do know what is going on, there is not enough time. Normally a week sometimes longer.

MBE: But even when you do bid the jobs, the person that's awarded the contract is a general. They end up turning it around on you later and saying

that somebody else's prices were lower and we're going to use them even though they used us as a minority in their proposal signature.

It is clear from personal interviews and comments in public hearings that prime contractors have been allowed to circumvent the good faith requirements under the City contracting program to the detriment of M/WBEs. Several business owners indicated that prime contractors solicit bids with no intention of utilizing the M/WBE. When bids are solicited from M/WBEs for the purpose of documenting a good faith effort, with no intention of utilizing the MBE or WBE, this is an abuse of the process and a waste of the M/WBEs' time. The owners reported that it is common for prime contractors to request bids from businesses that they know do not work in the requested area or businesses that do not have the capacity to complete the job request. Minority and women business owners believe that non-minority general contractors in these situations request the bid only to meet the good faith requirement.

Further, as a result of personal interviews and testimony from public hearings, we concluded:

- At the time of bid submissions, prime contractors' prices are fixed. At that time, the apparent low bidder's contract rights are established. Whereas M/WBE prices, at the time of bid submissions, are merely numbers from which to begin negotiation. In other words, a prime contractor can be the low bid and be guaranteed the project but if an M/WBE subcontractor is the low bid at the time of bid submission, the MBE or WBE is not guaranteed the contract.
- MBEs and WBEs often do not have ample time to prepare bid responses.
- Departmental purchases sometimes result in bypassing MBEs and WBEs because of the noncompetitive bidding process.

5.5.2 The Goal Setting Process

Concerning the City's goal setting process, MBEs and WBEs assert that goal setting is often arbitrary and the resulting goals are often too low in comparison to the availability of MBEs and WBEs willing and able to perform. In personal interviews, several owners

indicated that the percentage goals on some projects have been too low. (See Chapter 3.0 for a description of the goal setting process.) Consequently, if there were no set goals on a project, or the goals were too low, prime contractors would not utilize minorities or women on the project. The reason for this, according to one WBE owner, is prime contractors believe they can save money by using other subcontractors.

Another owner indicated that he sees too many projects with zero-zero participation goals, as well as too many projects that have to be rebid because the budgets were not correct. Based on documentation provided by the Engineering and Architectural Services Department, the number of construction contracts with zero-zero participation goals is high. Approximately one in five, or 20 percent, of City construction contracts since 1993 have had zero-zero participation goals. For example, in one of the public hearings, an African American MBE construction contractor expressed his concern that the City's M/WBE participation goals are too low, and City officials have not been very aggressive in setting goals.

The MBE explained that he has experienced this as a problem since the beginning of the program.

I've been continually certified ever since the program has been in existence, and the goals have always been too low. As a matter of fact, the goals were higher before you did the first disparity study, but there was the MBE program. It was like 10 percent across the board . . . Now you are lucky to get four or five percent with the staff. Most of them are zero, one and two, and the prime comes in with \$50 million and has to meet a one percent goal.

Reading from a document listing nine City projects to be bid, the MBE reported:

Three of those projects are DBEs, federally funded projects for DBE. Those three projects have 12 percent DBE requirement. Three have zero. Those three are not DBEs. They are regular MBE and WBE. They have zero goals. No males and no females. Two others out of the remaining six, one has five percent, one has two percent, and both of those are MBEs or WBEs. Now sometimes in my experience with the City, the City has a big stick, but is not allowed to use it. Also, I think sometimes you have a fox going into the henhouse where the City has the authority and the power to influence some of these things, but they are not doing it. Now if the City

staff set the goals, City staff was granting the waiver, the City is not helping the MBE/WBE program at all.

[Name] is a prime contractor and we as an MBE prime contractor ourselves also have to meet the goals. We have never failed to meet a goal. As a matter of fact, our minority participation exceeds 50 percent participation for the things we do for the City. The thing about not being able to meet the goals or not being able to find the people is not true because we as a subcontractor bid regularly on City projects, and the day after the bids are open, he has to submit his people that he is going to use a minority subcontractors. I go down and check and see and bid with every prime contractor who bids on the contract. I will be listed on two or three of the prime contractors and two or three I will not be listed.

So the prime contractor that got the project last Tuesday . . . this was the 91st Avenue water treatment plant, and only two prime contractors bid the proposal, 2.7 million dollars. And the low bidder, which he's the low bidder by \$97,000 had .7 percent minority. The other contractor had 5.7, and the goal was five percent. There should be something done by the City to correct that. Why would you give him a waiver with a .7 percent and the goal was five percent?

A certified WBE construction painting company that bid an average of five jobs per month with the City of Phoenix during the five-year period of this study and has received an average of 10 contracts per year, complained that the goals for WBE participation are arbitrarily set and are too low. Her company has the capacity and experience to do more than she has been contracted to do. In that regard, in an interview she stated:

WBE: It'll come out sometimes, 10 to 13 percent minority, and 1 percent WBE, very seldom will it be over one percent for the women, but what I think it is, there's few WBEs in this area that are qualified. . . .and what I think that they're afraid of, is that they won't be able to meet the quota¹ if they make it too high, but I will always bid the City mechanical work, and I can normally come in at one percent, I can normally come in within that range, so it's like, jobs that I know I could probably get if the quota were higher.

The owner of a certified WBE states that her firm was discriminated against by the City of Phoenix's Fire Department because her company has on numerous occasions since 1993 attempted to respond to requests for proposals to supply medical products to the Fire Department and has been virtually ignored. On one specific occasion, after attempting to

¹ It is believed the reference to quota was intended to mean goal. There are no quotas in the Phoenix Program.

respond to purchase orders, representatives of her company went to the Fire Department to meet with its representatives and they were told that the Fire Department only did business with a particular majority medical supplier.

The WBE owner was quoted in her interview as follows:

I think like with the Fire Department – it is the good old boy system. It is very difficult to get in there. We went down and met with whoever it is that actually requests the orders for the Fire Department. His attitude was “well we do business with ProMed” [a majority supplier].

Another MBE testified regarding the low goals that are set on City of Phoenix construction projects. He stated that goals are set much lower on City projects than federal government projects and that prime contractors are granted waivers with a much greater frequency on City projects than federal projects. The MBE provided an example concerning the difference in goals set on two courthouse projects. One courthouse was constructed with City funds and the other courthouse will be constructed with federal funds. He testified that while the courthouses were directly across the street from each other, the MBE and WBE participation on the federal project was considerably higher than on the City project.

The MBE described this situation as follows:

MBE: I wanted to make a comparison and I went and got my fax . . . in regard to the goals on both projects. The City of Phoenix on the Criminal Justice Facility had a goal of five percent for MBE and two percent for WBE. The low bidding contractor . . . [name] came in with .44 percent for his MBE and .78 percent for his WBE and was awarded the project. The one I want to compare him to, . . . the United States Courthouse, which is located across the street, didn't really have a goal. They had a good faith effort. And that contractor who was the lowest bid on that, which we also bid on that project, was the [Name], out of Philadelphia. The [Name], as we stand here tonight, the MBE that they have achieved already on the project is 15.5 percent. And this was very surprising to me, and the WBE is 16.9 percent. Now these two buildings are both high-rise courthouses, one financed with the federal government and one financed by the City of Phoenix. Both high-rise, both garages underground, both jailhouses underground, very similar in construction. Many of the same subcontractors are working on both projects. Now, we have completed the project with [Name] with the City of Phoenix, but we have not yet started with the one on the federal building yet.

Hearing Officer: Let me ask one follow-up question. On the project [Name] received the bid, I think the state courthouse.

MBE: Criminal Justice Facility, City of Phoenix courthouse.

Hearing Officer: The municipal courthouse, what were the goals on that project?

MBE: The goals on that project were five percent for MBE, two percent for WBE. And I want to leave these documents for the committee so you can have them for your records.

Panel Member: I have a couple of questions. Are you suggesting that on federal projects where there are higher goals that those goals are being met as opposed to the City having the small goals, they still don't meet the small goals? So you think if the goals are increased, that's a better opportunity to at least try to meet them?

MBE: Absolutely. The federal government has basically got a minimum of 10 percent, and it is met at all times, and the reason why it is met is because there's no waiver for that. If a prime contractor bid on a federally funded project, submits a bid and doesn't come in with 10 percent, his bid is not read. His bid is not recognized, and he will not be awarded the contract.

One certified WBE that performs asphalt paving described a specific incident on a Sky Harbor Airport project in which the prime contractor misrepresented to the City that the WBE would do a level of work that exceeded the goal, but in actuality allowed the WBE to do only the level of work that met the minimum amount of work to satisfy the goal. This WBE has received 15 subcontracts over the last five years. Clearly, the WBE was willing and able to perform. The owner related the incident as follows:

WBE: On the airport job we had went in to do more work, and we ended up having to, we ended up just getting the paving off of it when we were going to do additional work just so that they could meet the percentage that they had to obtain the contract.

Interviewer: Who was the general?

WBE: Who was the general? I don't want to give that name. . . . I mean, it was another general contractor that utilized my certification as a woman-owned business. We had went in with certain additional work and then they just cut us back right to the percentage that they needed in order to get the job.

The above example illustrates the point made by a number of MBEs and WBEs that

the process of setting goals appears to them arbitrary and limits the level of MBE and WBE participation. MBE and WBE owners perceive that the City's participation goals are too low.

Further, goals appear to be arbitrarily set and waivers granted when perhaps it was not necessary to grant a waiver. As a result of the personal interviews and testimony at the public hearing, MGT concluded:

- M/WBE participation goals are set without a realistic assessment of availability.

5.5.3 *Racist and Sexist Attitudes Toward M/WBEs*

Both minority and women business owners alleged that they have encountered hostility, prejudices, and sexism from City officials and majority business owners. Often M/WBEs are stereotyped as incapable of providing quality goods and services. These attitudes create feelings of frustration with M/WBE owners and serve as barriers for M/WBE participation with the City of Phoenix in contracting and purchasing.

In personal interviews, several MBEs and WBEs indicated they had negative experiences on job sites. The business owners described hostile experiences that made completing a project difficult. An African American business owner described overhearing racial epithets while on a job site. He stated that when a "quick fix" (on equipment) on the job had to be made in order to finish the job or until the equipment could be removed off the job and onto the yard to make the proper repair, he heard statements referring to the repair as "nigger-rigging" the equipment. He stated, "You overhear this stuff and then you have to deal with it internally. Well, are you going to say something, are you going to address this, or act like you didn't hear this or what are you going to do? You're stuck with it the rest of the day."

In a personal interview, one African American owner of a company providing security officers and investigative services discussed a problem he had on a three-year contract with the Aviation Department, which began in February 1998.

[T]hey were just giving us a really hard time. We had some racist people out there. My company is predominately black, and we had black employees out there, and they were just mistreating them, very discriminatory, talk down at them. It just created a tremendous communication problem.

He feels the City has discriminated against his company and listed several individuals and entities to whom he reported the incidents of harassment in a formal complaint. The owner recounted the incidents of discrimination:

They were very rude, very discriminatory. We were working out of booths. They would lock the guys, lock my guards out of their booths. They were making accusations that they weren't doing their jobs, when in fact they were doing little things to hamper them from doing their jobs. Then they would go run and complain like, 'The guard here is not doing his job.' Or, 'I came to the booth and the guard wasn't there, I couldn't see where the guard was.' They don't say, well 15 minutes ahead of that they locked the booth where the guard couldn't get in the booth, and the guard's trying to figure out how to get in. But then they'll say, the guard was away from the booth so I locked it. It was crazy, it was just little things that they were doing, and I really believe it was a manipulative effort to try and run us off.

In the public hearings, female business owners recounted experiencing stereotypical attitudes and a general atmosphere of disrespect. A WBE owner of a construction company testified concerning a threatening phone call she received after being on a television interview about a construction job. She stated, "I received threats advising me not to back minorities and stay in the kitchen where I belonged or else." She encounters other inappropriate comments regularly.

On a daily basis as a woman contractor I have to defend my right to be in my position. . . . I've lost many contracts as a result of owners not wanting to deal with a woman, they ask for the man in charge; the mentality exists that it takes a man to do this type of job. They happen on every single job I've had some kind of controversy, either the general contractor or fellow subcontractor, even sometimes employees because it is hard being a woman out there on the highway and building jobs in the City of Phoenix. . . . [T]hey don't respect you as well.

A certified Asian MBE supplier of marble and tile expressed how prime contractors avoid or decline to do business with him because of his accent. He has attempted to do business with the City and has received contracts during the period of this study. He is

willing and able to supply marble and tile on City projects. He described the environment in which he works through the following incident.

MBE: One time I get a bid request, I called and asked a question they kind of just like hang up the phone on me, so I didn't bid the job, because I didn't know what they want so how am I supposed to give them numbers.

Interviewer: You don't remember who the person was?

MBE: No, but that happened one time.

Interviewer: When did that happen?

MBE: Last year.

Interviewer: Someone just hung up on you when you had questions.

MBE: Basically, it's just like, I don't know what he's saying.

Interviewer: Because of your accent is that what they said?

MBE: Probably, I don't know, I always talk nice. I call and say I have this bid request, and I need to know what's the scope of work; they kind of just, hello, put me on hold, long time, and then I just hang up.

Interviewer: You hung up or someone hung up on you.

MBE: Both ways, because I don't know, if I'm still on, they say hold on, but if you wait at least 10 minutes, it's long time, I put on speaker phone while I'm doing something else: then to a point it becomes disconnected. Maybe I should call again. It not normal.

A certified African American female paint contractor stated that she experienced discrimination on the basis of gender in 1997 from a prime contractor. This MBE has bid on a number of contracts with the City of Phoenix both as a prime contractor and as a subcontractor. In this particular instance, she stated:

MBE: . . . I had the woman thing, the discrimination against women, they couldn't believe that I could handle what I needed to do on that job.

Interviewer: How long ago was that?

MBE: First part of 1997.

Interviewer: And what exactly happened?

MBE: We were doing some work on a hospital, no I was going to get info, there were questions. We had bid on some plans and I went into the office, and the gentleman asked me do you even know how to read plans. And I was like, okay, yes I do . . . he wouldn't have said that to my husband I know he wouldn't.

WBEs allege that they are still treated differently by prime contractors even after they have demonstrated over a period of years that they are willing and able to perform jobs satisfactorily. The owner of a certified WBE described a specific incident in her interview that reflected this negative attitude toward WBEs.

I had been challenged on one job. We'd worked with this one general contractor and since I had gotten a divorce and we had two of the contracts pending with them and I had a project manager point blank they held a meeting when they found out that my ex-husband had not had anything to do with my company before it was completely mine, started by me and challenged me that if . . . I didn't think we could perform the work on the next project that we would not then have the contract which had already been discussed. We had already pulled permits for the following contract, and I told him yes I did and I had my foreman, he's been with me for sixteen years, and I was completely floored. I was devastated that that contractor that we dealt with two years on that had even did that to me.

The owner of a certified WBE marketing and public relations firm stated that she was approached by a majority firm to be a WBE front for that firm around 1994 or 1995. This WBE bid on 10 prime contracts over the period of the study and was awarded three contracts. She continues to be willing and able to provide marketing services on her own. Regarding being asked to be a front for a majority firm, she stated:

Interviewer: So you've had companies approach you with that?

WBE: Yeah, they need a woman. They need a woman or they need a minority, they need that certification piece, but they don't really need my company for anything other than my certification. I'm not interested and I've never done it. . . . It's not like I'm doing anything, but I've had companies call me.

Interviewer: Do you remember any of those companies?

WBE: No, it's been awhile, I haven't had any of those in quite a while.

Interviewer: Was that between '93 and '97?

WBE: Yeah, but it was more like '94, '95 when that happened.

A Hispanic MBE owner of a marketing group, first commented on the City's certification process and stated:

I have never worked so hard to be called disadvantaged, but to this point I never felt that I needed to be certified to win a contract. I've been in my own business for 25 years, and I have had my own business for the past 10 and we've been able to win contracts without that label. I think at this point it served more as a detriment than a help.

She further testified about a problem she experienced in the City's RFP selection process for the Sky Harbor terminal advertising program. When her company was denied the contract, she appealed the decision and contested the grading system used in awarding the RFP. Concerning this appeal, she stated:

[O]ne of the Airport Committee Members, and this was a comment that was made before one of our councilmen, in asking how the decision was arrived at, they said they chose the other company because they were not about to award a contract of this size to a bunch of DBEs. Now, whether that was a racial or whether that was because of gender, I don't think that's the issue. I think the issue was that it was because of the labeling of DBE.

Overall, this WBE believes that the DBE label has had an adverse effect on her company, specifically, one of "tokenism."

WBE: [W]hen we were before the review committee, one of the participants asked, well, as a DBE, do you think you have the ability to provide marketing for the airport? Like I said, I've been in business in marketing for 25 years, I would not have a problem feeling I was qualified. Were they questions of merit or were they questioning the fact that we were a DBE because when they asked the question, they asked the question as a DBE if you feel you can perform.

Hearing Officer: Staying on that point, is it your testimony that there are certain presumptions that attached to the label DBE that didn't attach to you prior to you receiving that designation?

WBE: Yes, one of tokenism.

Hearing Officer: Are you saying the process rejected you because they did not want to have women or minorities as prime contractors?

WBE: One of the notes that we acquired from comments made by the airport staff was questioned - and this was a note provided by the review panel - they questioned the ability of the DBE to perform the job. And they didn't question the ability of [name]; they questioned the ability of the DBE.

In a personal interview, one WBE owner of a trucking company also discussed a problem she had with back charges from a prime contractor. Her company allegedly did not supply proper trucks, and the prime contractor asked her to pay for additional trucks that were on standby to perform a certain portion of the job. She did not report the incident and she did not contest the back charges with the prime contractor because she did not have the money to fight the company. As a result of the back charges, her company received approximately \$5,500.00 less than the amount they were to receive according to the original contract. She indicated that, like other small contractors, she was intimidated by the size of the company in this situation.

She also suggested that the City investigate two prime contractors, [names provided] concerning subcontractor payment issues.

The contractor we were working for, we bid with them, and was awarded the trucking portion of it. It was for [name]; and at one point, we were called to haul wet cement, which we had not contracted to do in the first place. We were gonna be working directly for the [company name]. So, we did work for them. As a result, we got out there and a lot of the trucks, since we didn't have belly dumps in the first place, which everybody knew, so we had to take them on, the owner/operators as ours, like we were leasing the trucks and we had as the drivers were our employees. So, we paid their workman's comp. Anyway, it was a big mess for us. . . . [Name] is such a large company anyway. They faxed over a contract for me to sign with them, but we had originally got the trucking through [name]. So, how [name] came into this I'll never know. Well, I signed, actually a proposal. [name] came in when we got ready to haul the concrete. Prior to that, our contract was with [name]. And then as a result though, [name] ended up docking us because they said they would order like 15 trucks. I told them, 'We cannot. We don't have any control over these trucks.' Cause they'd go out there, then the trucks would be leaking. And they'd say, 'Well, this one's gotta go home. That one's gotta go home.' They back charged us an enormous amount. We had right at \$60,000.00 coming from them. To begin with, when they got through back charging us, we had maybe \$10,000.00. Needless to say, I just about had a second heart attack. So, I went over and met with the [name] and the end results was they finally said they would settle for just charging us \$5,000.00 and something. Then, we had used all of these other people's trucks. So, then we had to go down and do the same thing to them. Whatever we were charged. I mean we couldn't have paid them that because all we made, really was seven percent on that portion of that job.

And I pulled in an attorney at that point with the [name] and they threatened me with everything. They said, 'We have 14 attorneys on our payroll day to day to day that are just waiting to get a hold of you.' And so, I think I was kind of, very much intimidated.

On the basis of the interviews and hearing testimony of the MBEs and WBEs, it is the perception that sexist and racist attitudes still persist in the contracting environment within the City of Phoenix. These attitudes carry with them negative assumptions about the capabilities of minorities and women. More importantly, such assumptions have a negative impact on the contracting opportunities for minorities and women. Therefore, as a result of the personal interviews and testimony at the public hearings, we concluded:

- The hostile contracting environment perpetuates racial and gender stereotypes and ultimately discourages M/WBE bidding.

5.5.4 Barriers Faced by M/WBEs

Bonding and Financing

Obtaining financing and securing bonding are often difficult for small, minority, and women-owned business. Five of the speakers at the public hearings testified concerning bonding or financing problems. One MBE, an Asian/African American woman, stated that because her businesses are so small, bonding is a problem that prevents her from bidding certain jobs.

One Hispanic MBE in the construction industry testified that bonding and financing issues have also prevented him from obtaining jobs. Specifically, he stated:

When you are asked to bid a job and really you have no chance to get the job or a part of that job because number one, you don't have the funding to carry the job; number two, you can't acquire the bonding; and number three, the job is way out of your league. As a new business, not having the background of the funding, the banking, all this to go with. I'd like to see the City of Phoenix increase minority programs that will allow us to participate in a fair manner.

Further, he concluded that without the financing to start the business and a financial history, it is difficult to even be afforded an opportunity to do business and stay in business.

Prime contractors have told him to contact them if he needed assistance in acquiring bonding and they might be able to assist him. He reported that he recently did contact the contractor on a project regarding bonding and the contractor informed him that it would be more helpful if he could acquire his own bonding.

One WBE owner of a construction company felt that bonding and finances have been obstacles for her. When she started her business, she related, it was very difficult.

We could not get a line of credit. The banks would not give us a second look. Bonding was out of the question. Lending bids was a frustrating experience. It was an extremely difficult and demoralizing time.

As a general contractor trying to obtain jobs, even after being certified, she stated:

I still had the problem of bonding and financial wherewithal. The only way I could get bonding was through personal surety, and now that's not allowed in the City of Phoenix.

Overall, the size of most City jobs prevents her from bidding as a general contractor because she cannot financially afford to do the project.

At one of the hearings, an MBE who operated a small business for 27 years gave relevant testimony concerning the bonding issue.

It was interesting every time we had a situation with a bonding requirement, it was a double-edge sword. Very difficult, even though we had a banking relationship and we had access to a bonding company, it was Catch 22. If you got the bonding, typically the prices you had to pay for the bond oftentimes knocks you out the saddle with the bid because the competitor was possibly able to pick up the bond at a lower rate. . . . [I]t got to the point where if it is a contract with the city, county, or state that had a bonding situation, we began to shy away from the business because it was a lot of work up front with no return on the investment of time. . . . [E]ven if a lot of these folks are not being able to get a bond, oftentimes when you do, the cost of it will knock you out of the bidding.

Clearly, bonding and financing issues present obstacles for minority and women owned businesses in contracting with the City of Phoenix, which ultimately prevent the financial growth of MBEs and WBEs and exclude these businesses from larger contracting opportunities.

As noted in Exhibit 5-2, the average existence of M/WBE firms is less than 10 years; whereas, 55 percent of the non-minority firms have been in existence more than 20 years. Accordingly, it is not surprising that financing and bonding requirements are much more difficult for MBEs and WBEs to meet.

Slow Payment

Slow payment by prime contractors often works a disproportionate hardship against minorities and women and is a barrier inhibiting M/WBE participation in City contracting and purchasing. Several businesses have had to initiate lawsuits concerning City projects. One Hispanic MBE owner in a personal interview discussed four lawsuits he has filed against prime contractors, all for nonpayment.

MBE: Absolutely, try sitting in a meeting, and they're looking at you, while you have all financial factors, you're wrong. Well the bottom line is, if the prime was paid 99 percent, and I was only paid 80, all the facts are there. And you're perceived as being stupid and non-educated, and non-reliable, so the perception is reality. We come off as a troublemaker, or combative, or hostile.

Interviewer: What do you do when you experience these problems?

MBE: We have to challenge them in a meeting; we call [City employees], and we'll say we're going to take this on, we're going to do it, but then you have them in the back door saying no, you know, they might be right, then not conduct any meeting. Then we're stranded, alone, fighting our own battles, which we don't have a problem doing at all, the City will tell you. Then we have to divert to additional costs, and we'll just take them to an attorney, and that's an additional expense to us.

Interviewer: How many times have you had to take legal action?

MBE: Four times out of our 20 contracts.

Interviewer: Can you explain what those situations were, and why you had to retain an attorney?

MBE: Non-payment, every time it's been non-payment.

Interviewer: Did you receive payment?

MBE: No, they're still pending.

An African American MBE owner who has been in the construction business in Phoenix for 22 years, testified in a hearing that City staff need better enforcement regarding payment of minority contractors. "That's a very sensitive issue when the guys don't get paid. And we've suffered that many times. It is either slow pay or no pay." As a minority subcontractor on the City project involving the Criminal Justice Facility, the City's new courthouse, this MBE is experiencing problems with slow payment apparently as a result of change orders.

It has been a year now. That is there by [name] as prime contractor. The bid amount was like 45 million dollars, but it has exceeded that greatly at this point. I understand last week there was over 6 million dollars in changes and corrections. The City will have to pick up that tab. Now, the problem I'm having on that project is the slow pay not only by the prime contractor but the City of Phoenix also. The City of Phoenix has a project where the prime contractor can't get paid; the subcontractor can't get paid. The reason why is because on change orders and any additional money the City don't meet but once every three to four months to decide those issues, and we've been finished with the project for two months. We have completed the project, and we haven't been paid, and the reason why is during the summer the City Council takes a break, and they don't meet to decide these change orders.

The owner of a certified WBE trucking company that received a significant number of subcontracts on City projects, discussed the City's treatment of WBEs and said that for several years they experienced difficulty in getting paid. She stated:

Back in '93,'94,'95, you know. Most of the time we would eventually get paid, but it would be whenever they darned well felt like it. Or, they would spend your money on maybe buying more equipment or whatever and then when they maybe got monies two or three months down the road of an entirely different job they'd pay you. So, that was one complaint I used to have. That they would not guarantee us, even though we would go ahead and file our liens. So, the City of Phoenix knew that we were trucking on that job. They would not discuss it with us or they would go ahead and pay the general without obtaining waivers from us. So, having the general in other words, pay us, get the waiver and so on and so forth. So, that was a complaint I had. Not so much now.

Bid Specifications

Bid specifications on goods and services procurements often give an unfair advantage to majority contractors who have worked with the City over an extended period of time and

perpetuate the perception of the “good old boy network.” Several business owners complained that bid specifications were drafted to require a specific brand of product to be used. Several owners indicated that the cost of obtaining the specific brand precluded them from bidding competitively. Further, owners reported that requiring a specific brand tends to favor the City’s current supplier of that good or it favors large companies that can purchase the required good at a discounted price. The following are examples of the effect of drafting bid specifications in this fashion.

During a personal interview, an African American business owner stated that he did not intend to re-certify with the City. He expressed frustration with the requirements the City imposed on businesses attempting to provide supplies. Specifically, he stated:

I didn’t see any advantage in certifying with them . . . in my field, the computer field, the City has chosen to buy only this type of system and to break into that industry, the company that they buy from wants you to have a store front, whether you can support their product or not, in order for you to even say you are authorized to sell or work on it. So you can’t break into the market. It is a locked market . . . The only way that I can actually bid on the contracts is to go through basically a retailer. If I have to bid at a retail price then I am automatically non-competitive.

A former MBE owner testified that bid specifications were drawn more favorably to his competitor.

MBE: [O]ftentimes you get into a potential RFP or contract that you would go through the diligence process and the waiting process of the award, and we would see that there were different things that would happen through that process that would impact evaluation on the final outcome. I’m talking about - I’ll give you a specific case in 1995, a large major project for the new City Hall. Specifications for that bid was specified to the specifications of my competitor’s line of furniture, which had to do specifically with the issue of cabling, and we had to have a customization to our furniture line in order to meet the specification. And by virtue of having the alteration, it drove the price of our product up where we were not on a level playing field with the competitor there. So there can be a specification that truly impacts and doesn’t allow you to be on level playing field. I think that’s an important issue.

Hearing Officer: Have you seen that on any other occasion where the specifications were drawn more favorable to your competitor?

MBE: Have I seen it outside of that particular instance? That one had the most effect on me. And we see it a lot in the commercial end of the business. In fact in that particular case we brought in - we went into an arbitration. We brought in specialists, City specialists, and it was interesting. We went into arbitration, and the electronic specialist who are far more educated in the area of distribution of power and cable and communication cable, they talked very specifically about how it was too much, too much capacity for the requirements of the City bidding the number of cables into it. And we went through the process, had a retired judge listen, shook his head, and ultimately ruled in favor of my competitor.

Hearing Officer: Was your competitor a majority person?

MBE: Yes.

5.5.5 Continuation of the M/WBE Program

Concern has been expressed regarding the impact that discontinuation of the M/WBE contracting program would have on minority- and women-owned business contracting with the City. Several individuals, including minority and women business owners and City officials, stated that discontinuation of the City's program would result in greater underutilization of minority- and women-owned businesses. The belief is that without programs requiring utilization of minority- and women-owned businesses, the contracting environment in Maricopa County is such that minority- and women-owned businesses would have even fewer contracting opportunities than they presently have. Minority business owners cite negative treatment by prime contractors in the private sector as examples of how M/WBEs are treated when no goals are required and no monitoring of M/WBE participation is provided.

An African American owner of a janitorial business described an incident he experienced approximately one-year ago bidding in the private sector.

I bid on a job with [name] and I was like number three out of 21 different companies, and they called me in for an interview. After the interview, they selected two other companies to take care of their facility, and they said I didn't line up with their philosophy, so I couldn't understand that. Ever since then I've been doing research to try and find out what they mean by 'their philosophy,' trying to get some idea so the next time I bid, maybe I'll fit . . . Define philosophy; we're there to clean and so I could prove I could handle

that type of job from employee to management support, to financial equipment, everything they needed for me to perform, I could provide, so what is philosophy?

When asked whether minority businesses would be given the opportunity to demonstrate their abilities if the City did not have this program, the same contractor said:

No, it would be much tougher, knowing the environment, the 'air' here in Arizona. It's kind of spoken, it's more or less demonstrated for the most part, if you're black or minority and there's a white company out there, that's where the job's going to go, and I'm saying that if you didn't have the government intervening and laws that were set up to help treat minorities fairly . . . we wouldn't get nothing . . . there is not a clear cut case of somebody saying 'we're going to discriminate against that guy' or whatever, but they go out of their way to do things to make themselves justify what they're doing to you and to me. It's there, and I've had to dig my way out of holes because of just wanting to work. I just want to work.

A WBE owner of a construction company, testified in a public hearing:

I get a lot more respect now because I've been in the business a long time, for 10 years with the City of Phoenix, and I've earned that respect. And I don't have the problems I had when I started out, I will grant you that, but I still dare say that if the program ended, I still would not get a phone call. It would go back to the good old boy network. . . . Typically when I bid on jobs, when there are goals, I have tremendous response and contractors have broken down jobs for me, given me pieces, different types of trades, so they have really helped. But without the program, they are not interested.

The WBE continued,

The M/WBE programs by the City of Phoenix and ADOT were the only reason we survived. We were working very hard to become independent of the programs but still derive a large portion of our contracts from them. Without them we couldn't survive. . . . When the COP [City of Phoenix] eliminated the goal program because of the Croson decision, all of our building came to a halt. We bid all the projects and did not get a response. . . . When the goals were lifted, I could not get a call back . . . [W]e are all taxpayers and we deserve a portion of the City contracts. The City of Phoenix goals program gives women and minorities an opportunity to participate.

A WBE owner of an advertising and public relations agency, expressed in a public hearing that discontinuation of the program would have a great impact.

[T]here still is . . . unawareness among minority businesses that the program exists. . . . [T]here are still a lot of minority businesses that do not have the information about the program, and it would benefit their small business as well as the City if they were contacted and knew about the

program. If the program was discontinued, it would have a severe negative impact on my business and other women-owned businesses and minority businesses.

In a public hearing, a WBE owner spoke on her own behalf and on behalf of the National Association of Women Business Owners. When asked what would happen if the program ended, she responded, "I think it would be devastating. I think it would go back to [the] era of the '60s and '70s where we had to fight to get the contracts."

An Asian MBE owner who has been in business four years, stated in a public hearing:

[I]f it wasn't for the MBE program, I probably wouldn't be here today as a business owner. It gave me the opportunity to do business with the City of Phoenix, and I would have to say the first three years we were on a lot of proposals basically . . . to fulfill the requirements. It was usually 10, 15 percent of the proposal was based on . . . minority participation. I would have to say the last year it . . . is probably more like 50 percent.

The MBE corrected this statement later in her testimony and said that actually closer to 90 percent of the jobs she received were attributable to her certification status. She continued:

Now we are basically selected because we do qualified work. I would really be sad if the program went away. I think it would be a disservice because it does give you the opportunity to start the business and to prove we can do qualified work.

Based on the above findings, absent the City's M/WBE participation program, the level of M/WBE participation in City purchasing and contracting activity will decline.